

CANADA / JUDGMENT

Cinema Internet Networks Inc v. Porter et al

2006 BCSC 1843

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 1843 Cinema Internet Networks Inc. v. Porter et al

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cinema Internet Networks Inc v. Porter et al,

2006 BCSC 1843

Date: 20061212

Docket: S043726

Registry: Vancouver

Between:

Cinema Internet Networks Inc.,

carrying on business as Cinemaworks

Plaintiff

And

James Scott Porter, Daniel Thomas Melanson,

Stephen Lyle Johnston and

Highspeed Systems Corporation

Defendants

Before: The Honourable Mr. Justice Myers

Reasons for Judgment

Counsel for the Plaintiff:

G. Baldwin

Counsel for the Defendants:

A.P. Devine

J. Forsythe

Articled Student

Date and Place of Trial/Hearing:

September 25-29 and

November 8-10, 2006

Vancouver, B.C.

INTRODUCTION

- [1] The individual defendants were employees of the plaintiff company, which I will refer to as Cinemaworks. Cinemaworks was in the business of supplying high speed internet services to hotels. The parties did not enter into employment agreements.
- [2] While still employed with the plaintiff, the personal defendants incorporated Highspeed Systems Corporation, which I will refer to as Highspeed. That company is also in the business of supplying high speed internet services to the hotel industry, focused on wireless installations. In addition, it is engaged in setting up hot-spots in which wireless internet access is offered directly to consumers in urban zones.
- [3] While still employed with the plaintiff, the defendants began to book orders for Highspeed. Shortly after, they resigned their positions with the plaintiff and began running Highspeed full time.
- [4] The plaintiff says that the defendants breached the duties owed to the plaintiff arising out of the employer-employee relationship. The plaintiff also claims against the company for inducing the personal defendants to breach their contractual duties.
- [5] The defendants say that they did not breach any duties owed as employees because Cinemaworks and Highspeed were in different market niches. They deny that they solicited business from customers of the plaintiff.
- [6] The personal defendants counterclaimed for constructive dismissal, but that was dropped in final argument. They also counterclaimed for shares of the plaintiff company which were promised to them. That claim was not disputed.

FACTS

- [7] Prior to 2000 Cinemaworks was in the business of supplying pay for view television to hotels, hence its name. In 2000, the company determined that it could not compete in that business, and began providing hotels with high speed internet services that the hotel guests could access with laptops from their hotel rooms.
- [8] Cinemaworks charges the hotels an installation fee for setting up the system and a monthly fee for warranty and maintenance.
- [9] The president of Cinemaworks throughout was Mr. William Massey.
- [10] The individual defendants were all hired by Mr. Massey at different points in time in 2002. Their relationship with the company was structured as independent contractors. However, this was only done so that tax and other payroll deductions would not have to be made. It is acknowledged by the defendants that even if they were contractors, they would owe the same duties as employees. I will therefore refer to them as employees, which I think reflects the true nature of their relationship.
- [11] The defendant Stephen Johnston was an acquaintance of Mr. Massey. Prior to joining Cinemaworks, he managed a marina. Upon joining Cinemaworks he was trained how to do installations by another employee. He learned the ropes and was given the title Installation Manger.
- [12] Mr. Porter formerly worked for Sprint Canada as its Strategic Alliance Manager and came to know Mr. Massey in that context.
- [13] Mr. Porter's initial role was to focus on sales, which built on what he was doing for Sprint. His title was Executive Vice-President, Sales and Marketing. Although there is a dispute as to how this came about, I do not think anything turns on it.
- [14] He gradually took on some administrative responsibilities, and, to a lesser degree, some supervision of installations. His role in sales continued.
- [15] Prior to joining Cinemaworks in June 2002, Mr. Melanson had worked for various companies in information technology and computers, primarily in sales.
- [16] Mr. Melanson initially worked under Mr. Porter in sales. Mr Melanson gradually took on more responsibility and he was given the title of business manager. His focus throughout remained on sales.
- [17] The company's staff was not large. The defendants described it as having a flat management structure with Mr. Massey at the top. The company was also fairly informal in the sense that no regular meetings were held.

- [18] In addition to performing management functions Mr. Massey did some sales. Although there were one or two others also involved in sales activities, it is apparent that Mr. Porter and Mr. Melanson were the primary people generating sales for the company, and secondarily Mr. Massey.
- [19] Although most of the plaintiff's business involved the provision of wired internet services to hotels, it would provide wireless service if that is what the customer wanted. Its promotional materials showed the company as being capable of doing either type of installation. On one occasion it did a wireless installation for a hotel, and used a sub-contractor for part of that work.

The departure of the defendants and information taken by them

- [20] The personal defendants formulated their plan to set up a business for themselves by at least some time in March, 2004. They incorporated Highspeed on April 7, 2004. As noted above, Mr. Johnston resigned on May 4. Mr. Porter gave his and Mr. Melanson's resignation letters to Mr. Massey on May 7, 2004.
- [21] The personal defendants testified that they set Highspeed up to concentrate on the provision of wireless internet services to hotels and to provide wireless hot spots to consumers. Although that was what they wanted to focus on, they would provide hotels with wired internet service if that is what the hotel wanted. As Mr. Johnston said: "we sold whatever we could sell".
- [22] In mid-April the defendants contacted virtually all of Cinemaworks clients that they personally knew. The defendants say that they did this only to let the customers know that the defendants were leaving the plaintiff. This was so that the clients would not be surprised upon learning about the departures through other means. At the same time the clients were asked if they would be willing to stand as references for the defendants' individual performance. The defendants said that the clients were advised that Cinemaworks was financially healthy with a large customer base and would be able to provide ongoing service and support without the defendants. The defendants denied soliciting any business in these calls. I will return to this later in these reasons.
- [23] Before leaving Cinemaworks, Mr. Porter began bringing home and scanning existing contracts between Cinemaworks and its customers. He said he did this so the company would have a back-up of the hard copy contracts. According to him, they were scanned on to his son's computer because his son had a scanner hooked up to it. He says his son re-formatted the hard drive so that its contents were lost.
- [24] I do not accept Mr. Porter's motive for scanning the contract, nor his evidence with respect to the loss of the data. Rather, I conclude it was part of the concerted effort made by all of the personal defendants to take the plaintiff's information with them when they left and that the data was not destroyed.

- [25] Mr. Porter and Mr. Johnston took their laptops with them when they left. They had been purchased by Cinemaworks. They contained all of the proposals that had been worked on by them. Mr. Porter's laptop also contained many Cinemaworks business plans and customer lists which showed existing contracts, their expiry dates, and service fees.
- [26] Mr. Melanson used his own laptop computer when he was with Cinemaworks. All of the proposals and emails he had done for Cinemaworks were on the hard drive. When he left he took his laptop with him, and did not erase any information on it. He also took a file of proposals. He admitted that Highspeed was in competition with Cinemaworks and that the information he took would be useful because it would allow Highspeed to make proposals with competitive pricing.
- [27] Mr. Johnston said his company-issued laptop stopped functioning around February 2004. He therefore replaced it with a new unit, for which he was not reimbursed. He took both laptops with him. If his original laptop was, indeed, of no value, it is hard to see why he would not have left it behind.
- [28] Between them, the defendants took - whether in electronic form or in hard copy - all, or virtually all, of the plaintiff's contracts with customers and proposals made by the company. In addition, they took the plaintiff's customer lists. The defendants also took a CD with a list of hotels from which, in part, the plaintiff developed its prospect list.
- [29] The defendants used the Cinemaworks' proposals on their laptops as templates for their own proposals. For example, on May 4, 2004, Mr. Melanson sent a proposal on behalf of Highspeed to the Holiday Inn Express, Richmond. Apart from price, the proposal exactly mirrored, word for word, image for image, font for font, a proposal that had been made some three months earlier by him on behalf of Cinemaworks. (Neither the Cinemaworks proposal or the Highspeed proposal bore fruit).
- [30] Mr. Porter's explanation for taking his laptop with the information on it was disingenuous and is reflective of his credibility in general:
- (a) He said he felt his laptop had been "gifted" to him. There was no evidence of that whatsoever, and he cannot have reasonably believed that.
- (a) He attempted to justify not deleting the plaintiff's information from the computer because he said that it would be difficult to sort out what information on the computer was his and what was the plaintiff's. Of course the simple solution to that would have been to leave the laptop behind.
- (a) Mr. Porter stated he took his laptop with the expectation that there would be a subsequent meeting about the content of the laptop. Yet he did not take the initiative to raise the matter with the plaintiff.

- [31] Equally disingenuous was the defendants' argument and their evidence that sought to excuse, or at least mitigate, the taking of the electronic and hard-copy information by the fact that the plaintiff never asked to get the information back.

Contracts entered into by the defendant Highspeed with customers or prospects of Cinemaworks

- [32] On April 27, 2006, Mr. Porter made a proposal on behalf of Highspeed to the Holiday Inn Express, Langley for the provision of a wired system. This resulted in a contract being signed with them on May 7, 2004. This was the day after Mr. Porter's and Mr. Melanson's resignation.
- [33] Some time in April, while still with Cinemaworks, the defendants made arrangements to assist the Metropolitan Hotel in New York with a wired system that it was installing. That was an existing customer of the plaintiff. The defendants sub-contracted that work out. No contract was signed for the work.
- [34] By at least May 9 the defendants had made arrangements and completed work for wireless systems for two hotels in New York, the Casablanca and the Elysee. (There are Cinemaworks invoices for the work which show a purchase order date of May 9). Both of these hotels were customers of Cinemaworks for wired networks. The Highspeed wireless network was installed on top of the wired networks, so the existing contracts with Cinemaworks carried on.
- [35] Mr. Porter admitted in cross-examination, and the inescapable conclusion is, that this work was arranged before the resignation of Mr. Melanson and Mr. Porter on May 7, 2004, and most probably before Mr. Johnston's resignation on May 4.
- [36] During the same May 2004 trip to New York the defendants made a proposal to another Cinemaworks customer, the Kimberley Hotel. That resulted in another contract for a wireless system installed on top of the wired Cinemaworks system, but that was not signed until December 2004.
- [37] The Doral Arrowood was another hotel in New York which had a contract with Cinemaworks for a wired system. According to Mr. Porter, that hotel heard that he would be in New York in May. Because they were interested in putting in a wireless system, they asked him to see them when he was in New York. Mr. Porter says that on May 14 he met with them, gave them a price, concluded a deal, and on the same day did the work.
- [38] In September 2004, the defendants signed a contract with the Milford Plaza in New York for a wired system. Mr. Porter said that the Milford Plaza was one of the hotels he had called in April to inform them that he was setting up his own company. He mentioned to them that he would be in New York in May and they asked him to come and see and them. At that point he says he was asked to bid for the work. Cinemaworks had made a written proposal to the Milford in March 2004 and a response to that proposal had not yet been received from the

hotel when the defendants made their proposal.

- [39] Prior to May 4, 2004, a proposal was made by Highspeed to La Soleil Hotel in Vancouver. But nothing came of this until two further proposal were made. The final arrangement was that Highspeed would provide free wireless internet service to the hotel, in return for the ability to put an antenna on its roof with which to generate a signal for a hotspot.
- [40] After they resigned, the defendants procured contracts for Highspeed with three hotels which Mr. Massey said were hotels which had been solicited by Cinemaworks, albeit without written proposals having been sent to them by Cinemaworks. These are the Governor Hotel in Portland, the Radisson Seattle Airport and the Royal Scott in Victoria. They were all for wireless systems.

DID THE PERSONAL DEFENDANTS BREACH THE DUTIES THEY OWED TO THE PLAINTIFF

- [41] An employee owes his or her employer a duty of fidelity, loyalty and good faith. That entails not competing with an employer while still employed by it. As was said in *Restaurantics Services Ltd. v. Nicolas* 2004 BCCA 130 at para. 48:

The jurisprudence in this court establishes that competition with an employer will in almost all cases constitute a breach of the duty of loyalty.

- [42] On the other hand, an employee is entitled to compete with his former employer providing he does not do so unfairly. Competing unfairly includes misuse of confidential information, which is, in any event, an independent wrong.

- [43] The court in *Restaurantics*, at para. 50, quoted the following passage from *Employment Law in Canada* by G. England:

Difficulties have arisen in determining the exact point at which planning and preparation by an employee who is still employed to set up himself or herself in competition with the employer will violate his or her implied duty of fidelity. ... After all, if it is lawful for an employee to engage in post-termination competition with an employer, it hardly makes sense to hold it unlawful to plan the form that such competition will take. In more recent decisions on point, the courts have held that merely planning to establish a competing business does not ipso facto violate the duty, unless it is clear that the employee has already determined to abuse the employer's confidential information or trade secrets in his or her future business or has already begun to canvass the employer's customers or entice fellow employees of the employer to join him or her in the new business. [*Corporate Classic Caterers v. Dynapro Systems Inc.* (1998), 33 C.C.E.L. (2d) 58 (B.C.S.C.); *Leith v. Rosen Fuels Ltd.* (1984), 5 C.C.E.L. 184 (Ont. H.C.J.), esp. at 195].

[Emphasis added in Court of Appeal judgment].

- [44] In the present case, I conclude that the defendants went well beyond merely planning their future business when they were still employed by the plaintiff. As I set out below, they entered into direct competition with the plaintiff while still employed with it.
- [45] Before turning to the specific breaches I will address two arguments made by the defendants.
- [46] The first argument was that although the defendants' resignation letters were handed in on May 4 and May 7, their employment terminated at the end of April. This is so, it is argued, because they were only paid until April 30. (They were not paid because Mr. Massey learned that they had left with the company's information). Therefore any solicitations made by them in May - even if done prior to the date they resigned - are not in breach of their duties as employees.
- [47] I do not accept that argument. An employee is not entitled to blithely breach his duties on the assumption that when his employer learns of the breach, he might withhold salary for the period during which the breach occurred.
- [48] The second argument made by the defendants is that the soliciting of wireless systems was not in breach of their duties because the defendants' focus is providing a wireless internet product to the hotel industry, whereas the focus of the plaintiff is on wired internet service.
- [49] That may be the business focus of the defendants and it might be that the plaintiff did not specifically concentrate in that area. Nevertheless, it was business that the plaintiff could handle, as it did in the past. And, as acknowledged by Mr. Porter, it held itself out as having that interest and capability. Whether it would do the wireless work through sub-contractors or not is beside the point.
- [50] The defendants argue that the wireless technology used by them was not developed by the plaintiff. That might be true, but it was not developed by the defendants either. In fact, the installation of wireless systems uses hardware and software available in the open market. The notion that the defendants developed some sort of wireless system or expertise on their own is belied by the fact that they were installing wireless systems within days of them having left the plaintiff.
- [51] If the duty of an employee not to compete with his employer does not involve the positive obligation to direct appropriate work to the employer, that obligation must be entailed in the duty of good faith and loyalty. The three personal defendants, who acted in concert, could easily have directed the wireless work to the plaintiff and arranged on behalf of the plaintiff for it to be done. They were the ones who collectively had that responsibility with the plaintiff. The defendants complain about Mr. Massey's lack of direction and of the flat management structure. But, if anything, that gave them the scope to pursue the wireless work for the plaintiff. The personal defendants were not low-level employees acting under close direction.

- [52] In short, the plaintiff and the defendant companies did not operate in separate spheres of providing wired and wireless services to hotels. There was only one sphere: the provision of wired and wireless internet services to hotels. As Mr. Melanson acknowledged in cross-examination, the defendants knew when they were setting up Highspeed that it would be in competition with the plaintiff.
- [53] I will turn now to consider the specific breaches by the defendants.
- [54] As is apparent from the above facts, the defendants admittedly solicited and obtained business from the Holiday Inn Express Langley before they resigned from the plaintiff. The system was wired a system. This was a clear breach of the personal defendants' duty of fidelity. That business should have gone to Cinemaworks.
- [55] The work done in April for the Metropolitan Hotel - an existing customer of the plaintiff - is also a clear breach of the defendants' duties for the same reason. The fact that it was sub-contracted by the defendants and would probably have been sub-contracted out by the plaintiff does not make a difference.
- [56] The work done for the Casablanca and Elysee in New York - both customers of the plaintiff at the time - in my view arose as a result of the telephone calls made by the defendants to Cinemaworks customers, made before the defendants resigned. I have referred to this conversation earlier in these reasons.
- [57] The defendants say that during these calls they made no solicitation of the customers. They say that these hotels asked Highspeed to make proposals to them. Mr. Porter said that the business which followed this call "fell into [his] lap".
- [58] The evidence of the defendants to that effect is not credible. I do not accept that the defendants merely told these Cinemaworks clients that they were setting up on their own and that they wanted to use the hotels as references. Rather, I conclude that the defendants made direct solicitations. I noted above that on May 4 2004 Mr. Melanson copied a Cinemaworks proposal made to the Holiday Inn in Langley and made a proposal to it for Highspeed. They did work for the Metropolitan Hotel while still in the employ of the plaintiff. There is no reason to think that they were more coy in their conversations with the New York hotels than they were with these two hotels. There is also no reason to believe that the defendants would have been more reticent to solicit business in breach of their duties than they were when they took the plaintiff's information.
- [59] Furthermore, the fact that the work was done by May 9 - within days of the defendants' resignation - leads to the inference that the work was solicited by them prior to their resignations.
- [60] I am also of the same view with respect to the Doral Arrowood and Milford Plaza. I do not believe that that was not directly solicited by the defendants while they were still with the plaintiff company.

- [61] With respect to La Soleil, that hotel was solicited by the personal defendants before their resignations. The contract was not signed until September 2005. As discussed above, the wireless service provided by the defendants to that hotel was in exchange for the ability of Highspeed to put an antenna on the roof from which they could provide a hotspot to a public area. Therefore, although the initial solicitation was no doubt in breach of their duties to the plaintiff, the ultimate arrangement was not something that would have been done by the plaintiff. I conclude that the defendants did not breach their duty to the plaintiff in concluding this arrangement.
- [62] I referred above to the Governor Hotel in Portland, the Radisson Seattle Airport and the Royal Scott in Victoria. Mr. Massey said that these hotels were prospects of the plaintiff but no written proposal had been sent to them by the plaintiff. The defendants denied any knowledge of this. Highspeed signed deals with these hotels after the defendants' resignations. I am unable to conclude that they were solicited by the defendants when they were still with the plaintiff, or that they used confidential information of the plaintiff in order to procure the work. In my view the defendants here were exercising their right to legitimately compete with the plaintiff.
- [63] In summary, I find that while still employed by the plaintiff, the defendants solicited work from the Holiday Inn Express Langley and the Metropolitan, Casablanca, Elysee, Doral Arrowood and Milford Plaza hotels in breach of their duties owed to the plaintiff.
- [64] The hot spot business stands in a different light. The plaintiff was not engaged in that business and the defendants were at liberty to pursue that once they resigned.
- [65] There is also the matter of the confidential information taken by the personal defendants. That of course is in breach of their duties. If the misuse by them resulted in a loss to the plaintiff, they would be liable for that, even if it was used to solicit customers after their resignations. I will address this when I consider damages.

DAMAGES

- [66] The plaintiff must show that it suffered loss as a result of the defendants' breaches.
- [67] The plaintiff sought to have an accountant, Mr. Kinley, qualified as an expert and his report admitted, but I refused to allow this, in part because Mr. Kinley owned shares of the plaintiff. I did allow him to testify to sales figures because that was not the subject of opinion evidence.
- [68] The defendant did not call any expert evidence on damages. Therefore I have no damage analysis before me, but I do have the sales figures generated by the contracts which I have held to have been wrongly obtained by the defendants.

- [69] The plaintiff submits that it is entitled to damages based on the difference between its projected revenues and actual revenues. Its projected revenues are based on an assumption that, if the defendants had not breached their duties, sales would have continued to increase at the same rate as they had in past years.
- [70] There is no evidence to allow me to base damages on that type of analysis. It is too speculative and assumes too many facts.
- [71] I adopt a different approach. It appears to me that if the defendants made the solicitations for the benefit of the plaintiff - as they should have done - instead of for Highspeed, the business Highspeed obtained would have gone to the plaintiff. That is the only logical inference. As I have said, the plaintiff was as capable of doing the wireless work as the defendant. It was clearly able to do the wireless work.
- [72] For the reasons I set out in the prior section, the defendants are not entitled to say that the plaintiff did not suffer a loss because the plaintiff was not actively pursuing wireless work.
- [73] Therefore the plaintiff should recover its lost profits for the hotels which the defendants improperly solicited, namely the Holiday Inn Express, Langley and the Metropolitan, Casablanca, Elysee, Doral Arrowood and Milford Plaza hotels.
- [74] The plaintiff also argued that the personal defendants should have provided notice of their departure. That may be the case, however, I am unable to conclude that any additional damages were suffered by the plaintiff as a result of the failure to give notice.
- [75] Although I have found that the defendants improperly took confidential information and they no doubt made use of it, there is no evidence as to any loss to the plaintiff (or gain to the defendants for that matter) beyond that already referred to with respect to the improper competition with plaintiff.
- [76] The revenues that the Highspeed contracts generated for installation fees and that the contracts have and will generate for monthly fees should be the starting point to calculate the plaintiff's lost profits.
- [77] From that needs to be deducted the costs that the plaintiff would have had to incur to generate the revenue. The weighted average of the plaintiff's cost of sales over the past three years was 52%. That should be deducted from the annual fees for the wired and wireless work.
- [78] The future revenue stream should be reduced to a net present value.
- [79] Hopefully the parties can agree as to the figure this analysis generates. If not they may appear back in front of me.

Punitive damages

- [80] The plaintiff claims punitive damages and primarily relies on RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc. 2003 BCSC 1773 (the judgment on liability); 2004 BCSC 1464 (the judgment on damages).
- [81] In that case the defendants denuded the defendant office of all its productive staff and took confidential information. In my view, while the case at bar is somewhat similar, it does not rise to the level of the misconduct in the RBC case, nor did the misconduct here have the same consequences. In my view, punitive damages are not merited here.

Mitigation

- [82] The defendants say that the plaintiff did not take reasonable steps to mitigate its damages because the plaintiff did not replace the defendants.
- [83] Given that I have awarded damages only with respect to the customers which the defendants solicited while they were still employees, and that the plaintiffs did not know of those solicitation at the time, I do not think the defendants' argument has any applicability.

JOINT AND SEVERAL LIABILITY

- [84] All of the defendants, including the company through the personal defendants, acted in concert in planning the personal defendants' breaches of duty.
- [85] Further, Highspeed induced the plaintiffs to breach the contractual duties they owed to the plaintiff.
- [86] The liability of the defendants will therefore be joint and several.

COUNTERCLAIM FOR FAILURE TO DELIVER SHARES

- [87] As I said at the outset of these reasons, the defendants counterclaimed for shares of the plaintiff which were not delivered to them, and that was not contested by the plaintiff.
- [88] The parties have agreed on the amount to be awarded with respect to this. Mr. Porter is entitled to \$32,000, Mr. Melanson \$25,000 and Mr. Johnston \$35,000. These amounts should be set-off against the damages payable to the plaintiff.

COSTS

- [89] The plaintiff asks for special costs because of late disclosure of information, and personal attacks made against Mr. Massey which were irrelevant to the issues.
- [90] I agree there may have been late disclosure, however, I don't think that materially affected the trial.

- [91] The personal attacks against Mr. Massey relate in large part to the counterclaim advanced by the defendants. They alleged that they were constructively dismissed because of the unethical conduct of Mr. Massey and the plaintiff with respect to the purchase and sale of inventory, and that they were engaged in a "pump and dump" share scheme in violation of securities law.
- [92] As I mentioned in the Introduction to these reasons, this counterclaim was dropped by the defendants, but only in their final argument.
- [93] There was no virtually no evidence of these allegations. To seriously pursue a "pump and dump" scheme would have required a trial within a trial, most likely requiring expert evidence. The defendants' efforts at attempting to establish this were half-hearted at best.
- [94] The transactions with respect to the inventory did not proceed in the end and the issue arose and was disposed of in 2003.
- [95] Moreover, the defendants did not purport to accept the alleged constructive dismissal within a reasonable time after they learned of the alleged improprieties.
- [96] It appears to me that the counterclaim was made in an attempt to embarrass the plaintiff and Mr. Massey. The plaintiff is a publicly traded company and this litigation has been disclosed as a material event.
- [97] Allegations alleging dishonesty in the absence of a reasonable factual foundation for them can result in an award of special costs.
- [98] In my view the defendants' conduct in pursuing the counterclaim merits an award of special costs. However, the counterclaim occupied a very small portion of the trial and most likely the trial preparation. Therefore, the plaintiff will only recover special costs for the portion of the litigation dealing with the constructive dismissal allegations. That should be determined, if necessary, by the Registrar.
- [99] The plaintiff shall have its costs for the balance of the litigation at Scale 3.

"E. Myers, J."

The Honourable Mr. Justice E. Myers

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